

WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES

SUMMARY AND DECISION OF THE STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on May 12, 2005 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on March 23, 2005 on a timely appeal filed February 15, 2005.

It should be noted here that _____ was not receiving benefits under the Children with Disabilities Community Services Program at the time of the fair hearing.

A pre-hearing conference was not held between the parties. _____ did not have legal representation. All parties took an oath to provide truthful information.

II. PROGRAM PURPOSE:

Medicaid (Title XIX of the Social Security Act) is a federal/state funded program that provides health care coverage to low-income and medically needy West Virginians. The program was enacted into law by Congress in 1965. The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982 allowed the State of West Virginia to elect the option of providing the Children with Disabilities Community Services Program (Federal title "Disabled Child In-Home Care Program") under Medicaid.

The Children with Disabilities Community Service Program provides medical services for disabled children who would otherwise be at risk of institutionalization so that they may reside in their family homes. The medical services must be more cost effective for the State than placement in a medical institution such as a nursing home, ICF/MR facility, acute care hospital or approved Medicaid psychiatric facility for children under the age of 21.

III. PARTICIPANTS:

_____, Claimant/Father of _____

Susan Striar-May, Consultant – Bureau for Medical Services

Sandra Joseph, M. D., Medical Director – Bureau for Medical Services

The fair hearing was conducted by conference call to all parties, at the request of Mr.

_____.

Presiding at the hearing was Ray B. Woods. Jr., M. L. S., State Hearing Officer and, a Member of the State Board of Review

IV. QUESTIONS TO BE DECIDED:

Does _____ meet the medical eligibility for the Children with Disabilities Community Services Program?

V. APPLICABLE POLICY:

Medicaid Program Instruction Memorandum MA-03-65, December 1, 2003.

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Department' Exhibits:

- D-1 Information Sheet – Children with Disabilities Community Services Program (Formerly TEFRA)
- D-2 Program Eligibility Criteria
- D-3 Memorandum to _____ County Community Services Manager from Office of Behavioral and Alternative Care dated 02/02/05 – Denial
- D-4 Annual Medical Evaluation (DD-2A) dated 07/22/04
- D-5 Annual Medical Evaluation (DD-2A) undated
- D-6 PAS-2000 assessed 09/27/04
- D-7 WVDHHR Comprehensive Psychological Evaluation (Triennial) (DD-3) dated 07/29/04
- D-8 Individualized Education Program (IEP) – Fayette County dated 05/19/04
- D-9 _____ County Child Development dated 04/29/04
- D-10 Family Support Program Social History Updated dated 11/03/04
- D-11 WVDHHR CDCSP Cost Estimate Worksheet dated 09/04
- D-12 Memorandum to _____ from Office of Behavioral and Alternative Care dated 11/23/04 - Request for additional information
- D-13 _____ Medical Hospital Records
- D-14 Report from _____ Management Clinic dated 05/24/04
- D-15 Memorandum from Office of Maternal, Child and family Health to Division of Specialty Care dated 11/29/04 – Listing of services
- D-16 Memorandum from Bureau for Medical Services to State Hearing Officer re: Exhibits

Claimants' Exhibits:

None

VII. FINDINGS OF FACT:

- 1) A Memorandum from the Office of Behavioral and Alternative Care to the [REDACTED] County Community Manager on February 2, 2005 stated in part,

A review of _____'s records to determine his eligibility for CDCSP services finds that he does not meet criteria for this program. According to the PAS-2000, _____ does not have deficits in five areas of performing his Activities of Daily Living, (ADLs) which excludes him from requiring a nursing level of care in order to remain in the community. According to the IEP, _____ is not developmentally delayed to the extent that he would require an ICF-MR (Intermediate Care Facility for people with mental retardation) level of care in order to remain in the community. The absence of a need for psychiatric care of course excludes him from an inpatient psychiatric level of care. In addition, the lack of documentation of emergency room visits or hospitalizations since 2003, with no indication from his specialists regarding a worsening of his condition, the need for acute care is not apparent. Moreover, the IEP demonstrates an improvement of his ability to function in the school environment without special needs.

- 2) An Annual Medical Evaluation for Children with Disabilities Community Services Program (DD-2A) was completed on July 22, 2004. _____ was 5 ½ years of age. The Physical Examination indicated that _____ had Abnormalities in the areas of his Throat - Bifid Uvula; Scoliosis; Asthma and; Abdomen – “G” tube feeding.

Problems Requiring Special Care: Mobility – Ambulatory; Continence Status – Continent; Mealtime – Needs Assistance, Gastric Tube and Special Diet; Personal Hygiene – Needs Assistance; Mental and Behavioral Status – Child.

Additional Treatment Recommendations: Speech and Physical Therapy.
Diagnosis: Mental – Nothing stated; Physical – “G” tube feed; Scoliosis; Asthma and Allergies. The Prognosis was listed as Satisfactory.

The Physician indicated that _____ did not require the level of care provided in an Intermediate Facility; Psychiatric Facility; Nursing Facility or; Acute Care Facility. The Physician did certify that _____ could be served by the Children With Disabilities Community Services Program.

- 3) An Annual Medical Evaluation for Children with Disabilities Community Services Program (DD-2A) was completed on September 28, 2004. The DD-2A was completed by the same Physician as previously stated. The Physician did not mark whether _____ required the level of care provided in an Intermediate Facility; Psychiatric Facility; Nursing Facility or; Acute Care Facility. The Physician did certify that _____ could be served by the Children With Disabilities Community Services Program.

4) Mrs. Striar-May reviewed the PAS-2000 completed on October 7, 2004 and, how it was evaluated by the Bureau of Medical Services. It provided the following information:

Question #25

In the event of an emergency, the individual is [c] Unable to vacate a building. **0 Deficits.**
(A 5 year old would not be expected to vacate a building).

Question #26

1.	Eating	Level 2	1 Deficit (Feeding Tube);
2.	Bathing	Level 1	0 Deficit;
3.	Grooming	Level 2	0 Deficit (A 5 year old is not expected to groom themselves);
4.	Dressing	Level 2	0 Deficit (A 5 year old is not expected to dress themselves);
5.	Continence	Level 1	0 Deficit;
6.	Orientation	Level 1	0 Deficit;
7.	Transfer	Level 1	0 Deficit;
8.	Walking	Level 1	0 Deficit;
9.	Wheeling	Level 1	0 Deficit 1 Deficit

Question #27

The child has skilled nursing needs in one or more of these areas, [g] suctioning, [h] tracheotomy, [i] ventilator, [k] parenteral fluids, [l] sterile dressings, or [m] irrigations. [The use of oxygen is not a deficit.] **0 Deficits.**

Question #28

The child is [c] not capable of administering his/her own medications. No – Child **0 Deficits.**

Mrs. Striar-May read Medicaid Program Instruction MA-03-65, December 1, 2003 Section B which states in part, “A child must have five [5] deficits to qualify medically. The capabilities of the child will be compared to other children his/her own age.” It was Mrs. Striar-May’s testimony that, the ADL’s would be more applicable to 9 and 10 year old children. The total deficits received on the PAS-2000 assessed October 7, 2004 were 1 Deficit.

5) A Comprehensive Psychological Evaluation was completed by _____ on July 29, 2004. According to Mrs. Striar-May, the evaluation is not typical of those received on children. The Psychologist did not use any evaluations measuring Cognitive and Adaptive Behaviors. The evaluation focused mainly on _____'s eating skills.

In the absence of any testing, Mrs. Striar-May did not understand how the psychologist determined the following information, unless through personal observations. The Developmental Findings/Conclusions stated: Per interview, patient is severely delayed in feeding behavior. The Placement Recommendations stated: Continued intervention at school, continued Occupational and Physical Therapy. Psychotherapy intervention when oral motor skills improve.

6) An Individualized Education Program (IEP) was completed by the _____ County Schools on May 19, 2004. The report provided the following information:

Present Levels of Educational Performance:

Personal/Social Skills - _____ greets and responds to adults and peers. He separates easily from his parents. He will take turns and share. He follows classroom rules and directions. He has difficulty participating in competitive play activities and solving problems on his own. According to Mrs. Striar-May, there is nothing of great need.

Adaptive Behavior – _____ can take care of his own toilet needs. He can feed himself and drink through a straw. He can ignore distractions and complete table work in required time. He needs help putting on his coat. He needs reminders to eat and not talk. He needs to improve his chewing and swallowing skills. According to Mrs. Striar-May this is average for a child in kindergarten. It still centers on eating.

Walking and Balancing Skills – Able to walk and balance independently. Again, typical for a 5 year old child.

Fine Motor Skills – _____ can write his name and all letters of the alphabet uppercase. He can write numbers 1 to 10. he can cut with scissors staying within ¼ of a line. Again not untypical of a child in kindergarten.

Cognitive Skills – _____ can match and identify six basic shapes. He can count to ten, and identify all uppercase letters of the alphabet. He has difficulty telling a story.

_____ spends 96% of the time in Regular Education and 4% of the time in Special Education.

7) The _____ County Child Development (Student Level of Performance Sheet) was apparently completed on April 29th. The year was not clear on Mrs. Striar-May's copy or the copies provided to the State Hearing Officer or Mr. _____'s. The document was not signed or state who completed the assessment. The assessment

reiterates the same information provided in the Psychological Evaluation and Individualized Education Plan.

8) A Family Support Program Social History Update was dated November 3, 2004. It is not signed by the Case Manager. The Update states in part:

Educational – _____ does well in school. He does not have any problems at this time. He is in regular education. _____ tries hard and makes good grades.

Functional – _____ functions at the level of a typical child his age. _____ physical/health keeps him from functioning at the level of a “normal” child his age. _____ needs assistance with all daily living/self-care skills.

Recreational/Leisure – _____ enjoys church and playing outside.

Legal Status – _____’s parent are his guardians at this time. _____ requires an ICF/MR level of care. _____ is diagnosed with PDD; Scoliosis; G-tube and a Cyst. According to Mrs. Striar-May, _____ is not receiving continued active treatment and, there is no documentation of PDD.

9) The Cost Estimate Worksheet was not considered as part of the eligibility process because, _____ was not deemed eligible for any of the four (4) categories.

10) On November 23, 2004, the Office of Behavioral Health and Alternative Care sent Mr. _____ a Memorandum for additional medical documentation. Dr. _____ confirmed the contents of the document which states in part,

The records indicate that _____ is capable of learning, communicating and ambulating, with his only deficiency in nutritional intake. This alone would not qualify him for services through CDCSP which are designed to allow the child to remain in the community. However, the available records do not adequately document that _____ would need to be in a nursing facility or a hospital if he did not receive the services from this program. Therefore, additional information is necessary in order to determine _____’s eligibility for services through CDCSP. Records from any and/all specialists, including the gastroenterologist, documenting the severity and prognosis of his condition, would be helpful, along with records from any hospitalizations and emergency visits from the past two years. In addition, since you indicated that you work, and information regarding insurance coverage available to you through your place of employment is necessary, along with reasons why _____ cannot be placed on that policy if you are also covered.

11) The only reported hospitalization or emergency room visit was reported in October, 2003. _____ was admitted on October 24, 2003 and discharged on October

30, 2003. The Admissions Diagnoses were listed as: Dumping Syndrome; Parainfluenza upper inspiratory infection; Cough during feeding; Scoliosis and; Diaphragmatic hernia.

12) Dr. [REDACTED] referred to a letter dated May 24, 2004 from [REDACTED] MD, Professor of Pediatrics at [REDACTED] to [REDACTED] MD, Children's Medicine Center at [REDACTED]. The letter stated in part,

Impression: Persistent mild pharyngeal dysphasia but with adequate weight gain and is taking more foods by mouth than previously and receiving less tube feeds. He has had no symptoms of dumping syndrome.

According to Dr. [REDACTED] there is no indication [REDACTED] is at risk of being admitted to the hospital due to these conditions. The documentation states [REDACTED]'s conditions are improving.

13) Mrs. Striar-May and Dr. [REDACTED] both testified that, the remaining exhibits submitted by the Department do not indicate [REDACTED] is at risk of hospitalization.

14) Mr. [REDACTED] referred to a letter dated January 11, 2005 written to Dr. [REDACTED] from [REDACTED] MD of the [REDACTED] Hospital. The letter listed [REDACTED]'s list of medical problems. Mr. [REDACTED] disagreed with the lack of deficits for Grooming and Dressing. [REDACTED] has a brace on his leg that requires assistance.

15) The supporting documentation consisting of the Annual Medical Evaluation, Psychological Evaluation, Individual Educational Plan and Family Support Program Social History Update, support the PAS-2000 completed on October 7, 2004.

VIII. CONCLUSIONS OF LAW:

1) Medicaid Program Instruction MA-03-65, December 1, 2003 states:

This program instruction revises West Virginia Medicaid Program Eligibility Guide [September 1, 1994] requirements for children 18 years of age and under who have the need for Nursing Facility level of care and want to apply for Children with Disabilities Community Services Program [CDCSP]. This policy clarification *does not apply to those children who apply under another level of care*. Policy transmitted by this program instruction is effective upon receipt.

Policy Provisions

Medicaid [Title XIX of the Social Security Act] is a federal/state program that provides health care coverage to low income and medically needy West Virginians. The program was enacted into law by Congress in 1965. The Tax Equity and Fiscal Responsibility Act [TEFRA] of 1982 allowed the State of West Virginia to elect the option of providing the Children with Disabilities Community Services Program [Federal title "Disabled Child In-Home Care Program"] under Medicaid.

A. To clarify the West Virginia Medicaid Program's requirements for determination of medical eligibility for CDCSP for Nursing Facility level of care, the following are to be included in the initial application/reapplication packet for children who have suspected need for this level of care:

1. PAS-2000 [Revised 01/03] completed within 90 days of submission;
2. Cost Estimate Worksheet DD6-CDCSP;
3. Social Assessment and History;
4. Individual Program Plan [IPP] and Individualized Education Program [IEP] or Individualized Family Service Plan [IFSP];
5. Speciality evaluations if indicated [Physical, Occupational, Speech and Language, Nutrition, etc.] and;
6. Home Health Care Plan if receiving home health services.

B. A child must have five [5] deficits to qualify medically. The capabilities of the child will be compared to other children his/her own age. The deficits will be derived from a combination of the following assessment elements of the PAS-2000:

Question #26

- | | | |
|----|-------------|--|
| 1. | Eating | Level 2 or higher [physical assistance to get nourishment, not preparation]; |
| 2. | Bathing | Level 2 or higher [physical assistance or more]; |
| 3. | Grooming | Level 2 or higher [physical assistance or more]; |
| 4. | Dressing | Level 2 or higher [physical assistance or more]; |
| 5. | Continence | Level 3 or higher [must be incontinent]; |
| 6. | Orientation | Level 3 or higher [totally disorientated, comatose]; |
| 7. | Transfer | Level 3 or higher [one person or two persons assist in the home]; |
| 8. | Walking | Level 3 or higher [one person assist in the home]; |
| 9. | Wheeling | Level 3 or higher [must be Level 3 or 4 on walking in the home to use Level 3 or 4 for wheeling in the home. Do not count outside the home]. |

Question #25

In the event of an emergency, the individual is [c] mentally and/or [d] physically unable to vacate a building.

Question #27

The child has skilled nursing needs in one or more of these areas, [g] suctioning, [h] tracheotomy, [i] ventilator, [k] parenteral fluids, [l] sterile dressings, or [m] irrigations. [The use of oxygen is not a deficit.]

Question #28

The child is [c] not capable of administering his/her own medications.

C. The evaluations must demonstrate that a child has a diagnosis of a severe, chronic disability which is attributable to a physical impairment or medical condition requiring a Nursing Facility Level of Care. The child's need for this level of care and its corresponding services must be for an extended duration.

D. It is also necessary that the level of services provided in the community must serve the child as well as or better than comparable services in a nursing facility and the total costs must be less than the same services delivered at that level of care.

IX. DECISION:

It is the decision of this State Hearing Officer that _____ does not meet the medical eligibility for the Children with Disability Community Services Program.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29